

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

#### 50 CFR 17

#### Endangered and Threatened Wildlife and Plants; Reproposal of Critical Habitat for the Devil's River Minnow

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Reproposal of critical habitat.

**SUMMARY:** The Service repropose Critical Habitat for the Devil's River minnow (*Dionda diabolii*), a native fish of Texas. The threatened status and Critical Habitat were originally proposed for this species on August 15, 1978 (43 FR 36117-36120). The Critical Habitat portion of this proposal was withdrawn by the Service on March 6, 1979 (44 FR 12382-12384) because of the procedural and substantive changes in law made by the Endangered Species Act Amendments of 1978. This proposed rule conforms with these requirements.

**DATES:** Comments from the public must be received by July 15, 1980. Comments from the Governor of Texas must be received by August 14, 1980. A public meeting on this proposal will be held on June 12, 1980.

**ADDRESSES:** Interested persons or organizations are requested to submit comments to Director (OES), U.S. Fish and Wildlife Service, Department of the

Interior, Washington, D.C. 20240. Comments and materials relating to this rule are available for public inspection by appointment during normal business hours at the Service's Office of Endangered Species, Suite 500, 1000 N. Glebe Road, Arlington, Virginia 22201. A public meeting will be held at 7:00 p.m. in the Del Rio Civic Center located at 1915 av. F in Del Rio, Texas.

**FOR FURTHER INFORMATION CONTACT:** For further information on the original proposal, as well as this supplement, contact Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, Fish and Wildlife Service, Washington, D.C. 20240 (703/235-2771).

#### SUPPLEMENTARY INFORMATION:

##### Background

The Devil's River minnow was proposed as Threatened with Critical Habitat on August 15, 1978. Subsequently, Congress passed the Endangered Species Act Amendments of 1978, which substantially modified the procedures the Service must follow when designating Critical Habitat. The present rulemaking will bring the Critical Habitat proposal into compliance with the amendments.

The Devil's River minnow was described in 1956 and is presently known to inhabit the free flowing portion of Devil's River and San Felipe Creek in Val Verde County, Texas. Adults of this species are typically 2 inches in length and are normally found inhabiting the clear, fast flowing waters of channel or semi-riffle habitat. Research has indicated that the Devil's River minnow is somewhat flexible in its habitat preferences which permits the species to subsist in flood-prone desert streams. Little other information

is known about the biology of the species.

Populations of the Devil's River minnow have recently been eliminated by dam construction, diversion of surface waters, removal of aquatic vegetation, and excessive pumping of groundwater. Many of these activities continue to threaten the remaining populations of the Devil's River minnow.

Section 4(a) of the Act (16 U.S.C. 1531 et seq.) states: "General—(1) The Secretary shall by regulation determine whether any species is an endangered species or a threatened species because of any of the following factors:

(1) the present or threatened destruction, modification or curtailment of its habitat or range;

(2) overutilization for commercial, sporting, scientific, or educational purposes;

(3) disease or predation;

(4) the inadequacy of existing regulatory mechanisms; or

(5) other natural or man-made factors affecting its continued existence."

This authority has been delegated to the Director.

#### Summary of Factors Affecting the Species

The Devil's River minnow historically was known only from the Devil's River, San Felipe Creek, and Las Moras Creek in Val Verde and Kinney Counties, Texas. Recently, the aquatic habitats of this region have been radically modified for flood control, agricultural, and recreational purposes. These activities have altered the natural free flowing desert stream environments resulting in the rapid and significant decline of the Devil's River minnow.

The findings from recent survey work

and available literature are summarized herein under each of the five criteria of Section 4(a) of the Act. These factors, and their application to the Devil's River minnow, are as follows:

1. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The decline of the Devil's River minnow, occurring primarily in the last 20 years, can be directly attributed to habitat modifications. The population of the Devil's River minnow inhabiting the lower portion of the Devil's River was eliminated and its habitat destroyed in 1968 by the backwaters of the Amistad Reservoir. The population in the headwaters of Devil's River was extirpated by the desiccation of spring and stream flow resulting from groundwater removal. The original headwater springs, near Juno, Texas, and five of the six Pecan Springs, the current headwater springs, are now dry. In addition, the population of minnows existing in the Las Moras Creek habitat was destroyed by the diversion of surface water and the chaining of aquatic vegetation done in order to maintain the Fort Clark Resort swimming pool.

The extant Devil's River minnow population at San Felipe Creek is threatened by the implementation of flood control measures without concern for the species survival and the encroachment of urbanization. Populations remaining in the free flowing portion of Devil's River will be subjected to the further dwindling of stream discharge as groundwater pumping continues. Given current trends in the usage and manipulation of water resources and natural drainage systems, the loss of essential Devil's River minnow habitat is likely to accelerate.

2. *Overutilization for commercial, sporting, scientific, or educational purposes.* Not applicable.

3. *Disease or predation.* Not applicable.

4. *The inadequacy of existing regulatory mechanisms.* Laws concerning nongame species in Texas do not provide for habitat protection of these species. Furthermore without the constraints afforded by the Endangered Species Act, as amended, vulnerable species may be placed in jeopardy of extinction or become extinct due to Federal actions.

5. *Other natural or man-made factors affecting its continued existence.* Not applicable.

#### Critical Habitat

The Act defines "Critical Habitat" to include (a) areas within the geographical area occupied by the species at the time

that species is listed which are essential to the conservation of the species and (b) which may require special management considerations or protection; and specific areas outside the geographic area occupied by the species at the time, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Sections 4(f)(4) and 4(b)(4) of the Act require, to the maximum extent prudent, that any proposal to determine Critical Habitat be accompanied by a brief description and evaluation of those activities which, in the opinion of the Secretary, may adversely modify such habitat if undertaken, or those Federal actions which may be impacted by such designation. Activities which may impact the areas are identified below for this species. It should be emphasized that Critical Habitat designation may not affect each of the activities listed below, as Critical Habitat designation only affects Federal agency activities, through Section 7 of the Act.

The primary land use adjacent to the proposed Critical Habitat is sheep and cattle ranching. These activities are not known to adversely affect the Devil's River minnow. However, any future excessive groundwater pumping or surface water diversion in the vicinity of the Critical Habitat for agricultural or other purposes could be detrimental to this species by limiting flows in the Devil's River. A portion of the proposed San Felipe Creek Critical Habitat lies within the city limits of Del Rio and may be affected by urbanization that would modify the natural stream channel and by pollution including litter.

The Soil Conservation Service has proposed, under the authority of Public Law 83-566, the San Felipe Creek Watershed Project, which includes the construction of one single-purpose floodwater retarding structure on San Felipe Creek. A permit is also required from the U.S. Army Corps of Engineers before this project is implemented. If the floodwater retarding dam is built as currently designed, the Devil's River minnow is likely to be adversely affected and the proposed Critical Habitat will be altered. Therefore, this rulemaking would require the Soil Conservation Service and the U.S. Army Corps of Engineers to enter into Section 7 consultation and the San Felipe Creek Watershed Project may need to be modified in order to minimize any potential impacts to the Devil's River minnow or its proposed Critical Habitat. After appropriate consultation the Service anticipates that the watershed project may be allowed to proceed;

however, significant modifications may be recommended, possibly resulting in the delay of the project and an increase in its costs.

In addition, any future action or development of the Del Rio City water works, the city park, or highway and railroad bridges over San Felipe Creek that involve Federal permits or funding may be subject to Section 7 provisions. The Service expects that such future projects could proceed after appropriate consultation and adequate precautions are taken to protect the Devil's River minnow from adverse impacts.

The proposed Critical Habitat for the Devil's River minnow is as follows: The Devil's River from the backwaters of Amistad Reservoir upstream to Texas Highway 163 crossing approximately 1 mile east of Pecan Springs. Pecan Springs and its outflow downstream to its junction with Devil's River. San Felipe Springs and outflow spring runs in Del Rio, Texas, from U.S. Highway 277 upstream to the headwater springs of San Felipe Creek. The Critical Habitat areas are within Val Verde County, Texas.

The Service is required to consider economic and other impacts of specifying a particular area as Critical Habitat and has prepared a draft impact analysis. The Service is notifying Federal agencies that may have jurisdiction over the land and water under consideration in this proposed action. These Federal agencies and other interested persons or organizations are requested to submit information on economic or other impacts of this proposed action.

The Service's impact analysis will form the basis for the Service's decision as to whether or not to exclude any area from Critical Habitat for the Devil's River minnow.

#### Effect of this Proposal if Published as a Final Rule

Section 7(a) of the Act provides: "(1) The Secretary shall review other programs administered by him and utilize such programs in furtherance of the purposes of this Act. All other Federal agencies shall, in consultation with and with the assistance of the Secretary, utilize their authorities in furtherance of the purposes of this Act by carrying out programs for the conservation of Endangered species and Threatened species listed pursuant to Section 4 of this Act. (2) Each Federal agency shall, in consultation with and with the assistance of the Secretary, insure that any action authorized, funded, or carried out by such agency (hereinafter in this section referred to as an "agency action") is not likely to

jeopardize the continued existence of any Endangered species or Threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary, after consultation as appropriate with the affected States, to be critical, unless such agency has been granted an exemption for such action by the Committee pursuant Subsection (h) of this section. -- --"

Provisions for Interagency Cooperation are codified at 50 CFR Part 402. If published as a final rule this proposal would require Federal agencies not only to insure that activities they authorize, fund, or carry are not likely to jeopardize the continued existence of the Devil's River minnow, but also insure that their actions are not likely to result in the destruction or adverse modification of Critical Habitats which have been designated by the Secretary.

#### Public Comments Solicited

The Director intends that rules finally adopted will be as accurate and effective as possible in the conservation of the Devil's River minnow. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, private interests, or any other interested party concerning any aspect of these proposed rules are hereby solicited. Comments are sought concerning:

(1) Biological, commercial, or other relevant data concerning any threat (or the lack thereof) to the species included in this proposal;

(2) The location of and the reasons why any habitat of this species should or should not be determined to be Critical Habitat as provided for by Section 4 of the Act;

(3) Additional information concerning the range and distribution of this species;

(4) Current or planned activities in the subject areas;

(5) The probable impacts on such activities if the area is designated as Critical Habitat; and

(6) The foreseeable economic and other impacts of the Critical Habitat designation on Federally funded or authorized projects.

#### Public Meeting

The Service hereby announces that public meetings will be held on this proposed rule. The public is invited to attend these meetings and to present opinions and information on the proposal. Specific information relating to the public meeting is set out below:

Place	Date	Time	Subject
1. Del Rio, Texas, Del Rio Civic Center.	June 12, 1980.	7:00 p.m. ....	Devil's River minnow.

#### National Environmental Policy Act

A draft Environmental Assessment has been prepared and is on file in the Service's Washington Office of Endangered Species. The assessment will be the basis for a decision as to whether this determination is a major Federal action which would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969.

The primary author of this rule is Jim Bednarz, under contract to the Fish and Wildlife Service, Regional Office, Albuquerque, New Mexico.

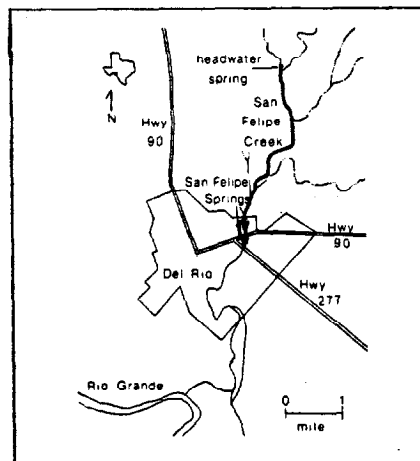
#### Regulations Promulgation

Accordingly, it is hereby proposed to amend 50 CFR 17.95(e), Fishes, be amended by adding the following Critical Habitat after that of the Slender chub:

#### Devil's River Minnow

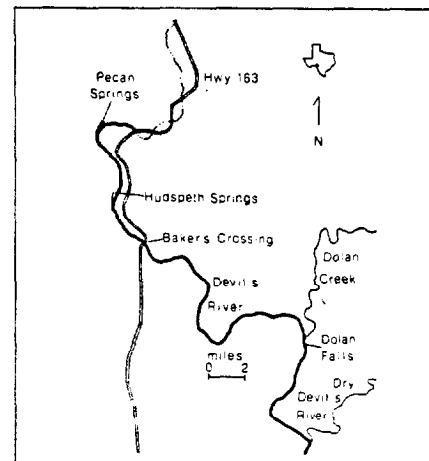
(*Dionda diaboli*)

Texas, Val Verde County. Devil's River from the backwaters of Amistad Reservoir, below the confluence of Dry Devil's River, upstream to Texas Highway 163, Crossing approximately 1 mile east of Pecan Springs. Pecan Springs and its outflow downstream to its junction with the Devil's River. San Felipe Springs and spring runs in Del Rio, Texas, from U.S. Highway 277 upstream to the headwater spring of San Felipe Creek approximately 2.5 miles north northeast of U.S. Highway 277 crossing.



Devil's River Minnow  
Val Verde Co., Tex.

#### Devil's River Minnow Val Verde Co., Tex.



**Note.**—The Department of the Interior has determined that this proposal is not significant and does not require preparation of a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: May 12, 1980.

Robert S. Cook,

Acting Director, Fish and Wildlife Service.

[FR Doc. 80-15183 Filed 5-15-80; 8:45 am]

BILLING CODE 4310-55-M